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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: December 19, 2023

+ W.P.(C) 16357/2023

MAHADEB SARKAR

..... Petitioner

Through: Mr. Sameer Sharma, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Dev P. Bhardwaj, SPC with
Mr. Abhishek Khanna, G.P. for UOI.**CORAM:****HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA****V. KAMESWAR RAO, J. (ORAL)****CM APPL. 65798/2023**

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

CM APPL. 65797/2023

3. This is an application filed by the petitioner seeking to place on record rejoinder.
4. For the reasons stated in the application, the same is taken on record.
5. Application stands disposed of.

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6. The challenge in this petition is to an order dated October 05, 2023 passed by the Central Administrative Tribunal ('Tribunal', in short), Principal Bench, New Delhi in M.A. No. 2493/2019 in O.A. No. 999/2019



titled as ***Mahadeb Sarkar vs. UOI & Ors.*** filed by the petitioner herein seeking implementation of order dated March 28, 2019 passed by the Tribunal in O.A. No.999/2019, which reads as under :

“6. In the circumstances and since the main relief in the OA itself is for engagement as a daily wager, if there is work and in preference to the juniors, the OA is disposed of without going into merits of the case by directing the respondents to consider engaging the applicant as a Daily Wager on the same terms, if there is work and in preference to any of his juniors or freshers. No costs.”

7. Learned counsel for the petitioner has drawn our attention to the M.A. filed by the petitioner under Rule 24 of the CAT (Procedure) Rules, 1997. It is his submission that two persons viz. Abhishek Kumar and Makhan Lal, who were initially engaged in August, 2015 and September, 2014 respectively, have been allowed to continue in the service, overlooking the right of the petitioner and also the directions of the Tribunal.

8. He also submits that even in the rejoinder affidavit filed by the petitioner before the Tribunal, he had mentioned the names of the persons viz. Mohd. Subin (Junior engaged in 2015), Rishi Gupta (Fresher), Sadab Khan (Fresher), Ajay Kumar (Fresher) and Desh Raj (Fresher), who are still allowed to continue in service.

9. According to him, the Tribunal has not considered the aforesaid averments before dismissing the M.A., on the ground that the respondents are managing their work through regularly employed persons and as such, there is no need to engage any daily-wager / contractual employee(s).

10. He has also drawn our attention to the reply filed by the respondents to the M.A. at page No. 75 of the paperbook, which reads as under :



*“ Since there was actuate shortage of delivery personnel in New Delhi South Division, therefore, the approval of the Competent Authority was communicated to manage the work locally engaging outsider to manage the delivery work through outside manpower under the category of Semi Skilled as conveyed vide AD (Staff & Legal) letter No. OS/13 (Staff/P0/2013-14 dated 23.12.2016. Copy of letter dated 23.12.2016 is annexed hereto and marked as **Annexure-R/1.**”*

11. Mr. Dev P. Bhardwaj, learned counsel for the respondents has relied upon paragraph 3(C) of the reply, at page No. 81 of the paperbook, wherein, following has been stated to contend that the respondents have not engaged any fresher / outsider overlooking the right of the petitioner :

“3(c). That in regard of para 3(c), it is submitted that the Order/Judgment dated 28.03.2019 passed in OA No 999/2019 were already communicated to the Postmaster Sangam Vihar Post · Office New Delhi - 110080 vide letter No: F/Misc/Mahadeb Sarkar/2019 dated 13.05.2019. In the event of appointment of regular staff, there is no requirement of the outsourcing of staff at present at Sangmn Vihar Post Office.”

12. Though, different stands have been taken by the parties, justifying their respective contentions, we are of the view that the Tribunal should have taken into consideration the averments made by the petitioner herein and decided the M.A. on the issue, as to whether the order dated March 28, 2019 has been violated / need to be implemented.

13. Suffice to state, the Tribunal could not have disposed of the M.A. only on the basis of the stand taken by the respondents, specifically, when a stand contrary to what has been taken by the respondents, was taken by the petitioner before the Tribunal.

14. We accordingly set aside the impugned order dated October 05, 2023



and revive the M.A. No. 2493/2019 on the Board of the Tribunal with a direction to the Tribunal to decide the M.A. after considering the averments made by the petitioner in the M.A. / rejoinder and the respondents in their reply and decide the same in accordance with law.

15. For the aforesaid purpose, we fix a date of hearing before the Tribunal as January 08, 2024.

16. With the above, the petition is disposed of.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

DECEMBER 19, 2023/R